



Peter  
UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, Maryland 20910

AUG 17 2001

MEMORANDUM FOR: Distribution

FROM:

*Donald J. Leedy*  
for Valerie L. Chambers  
Chief, Domestic Fisheries Division

SUBJECT:

Amendments 54/54 to the Fishery Management Plans  
for Alaska Groundfish

The North Pacific Fishery Management Council has submitted to the National Marine Fisheries Service the attached amendments for Secretarial review, approval, and implementation. The amendments to Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area include a Regulatory Impact Review and an Initial Regulatory Flexibility Analysis. NMFS published a notice of availability of Amendments 54/54 for public review and comment on July 24, 2001 (66 FR 38412).

Amendments 54/54 would make three changes to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries off Alaska. The changes would: (1) allow a quota share (QS) holder's indirect ownership of a vessel, through corporate or other collectives ties, to substitute for the QS holder's ownership in his or her own name for purposes of hiring a skipper to fish the QS holder's IFQ; (2) add language specific to estates to the definition of a "change in the corporation or partnership" to prevent estates from holding QS indefinitely; and (3) standardize use limits for the two IFQ species by revising sablefish use limits from percentages of the total number of QS to specific numbers of QS units.

Please provide your comments (including "no comment") to me by September 24, 2001. If you have any questions, please call Don Leedy at 301-713-2341.

Attachments





\*Distribution

F/SF - Morehead/Mobley  
F/SF3 - Chambers/Leedy  
F/SF5 - Fricke, Brainerd,  
Fx1 - Chaves  
Fx2 - Schaefer  
F/EN - Jones, Hoover  
N/ORM3 - Uravitch  
GCF - Chi  
GCEL - Kuroc

F/PR - Knowles  
F/PR2 - Eagle/Wieting/Lawson  
F/PR3 - Brewer  
F/ST - Fox/Trott  
F/ST1 - Holliday, Ward  
F/HC2 - Bigford/Osborn  
OGC - Cohen  
SP - Schreiber/Kokkinakis



AMENDMENT 54 TO THE FISHERY MANAGEMENT PLAN  
FOR GROUND FISH OF THE GULF OF ALASKA

In Section 4.4.1.1.5, Use and Ownership Provisions, paragraphs (5) and (6) are replaced with the following:

(5) Persons, as defined in this section, who receive initial catcher vessel QS may utilize a hired skipper to fish their quota providing the person owns the vessel upon which the QS will be used, or the vessel is owned by a person with whom the QS holder is affiliated through membership in a corporation or partnership. These initial recipients may purchase up to the total share allowed for the area. There shall be no leasing of such catcher vessel QS other than provided for in Section 4.4.1.1.4(1) above. For the sablefish fishery east of 140 W. longitude and for the halibut fishery in Area 2C, the above allowance for hired skippers applies only to corporations, partnerships, and other collective entities. *(Additional shares purchased by these corporations, partnerships, or other entities for the area east of 140 W. will not be exempted from the provisions of this section, nor does this exception apply to individuals using catcher vessel IFQs east of 140 W.).*

This provision will cease upon the sale or transfer of QS or upon any change in the identity of the corporation, partnership, or estate as defined below:

(a) Corporation: Any corporation that has no change in membership, except a change caused by the death of a corporate member providing the death did not result in any new corporate member. Additionally, corporate membership is not deemed to change if a corporate member becomes legally incapacitated and a trustee is appointed to act on his behalf, nor is corporate membership deemed to have changed if the ownership shares among existing members change, nor is corporate membership deemed to have changed if a member leaves the corporation.

(b) Partnership: Any partnership that has no change in membership, except a change caused by the death of a partner providing the death did not result in any new partners. Additionally, a partnership is not deemed to have changed if a partner becomes legally incapacitated and a trustee is appointed to act on his behalf, nor is a partnership deemed to have changed if the ownership shares among existing partners change, nor is a partnership deemed to have changed if a partner leaves the partnership.

(c) Estate: Any estate that has not been disposed to a legal heir.

(d) Individual: Any individual as defined in Section 4.4.1.1.1.

(6) For sablefish each qualified person or individual may own, hold, or otherwise control, individually or collectively, but may not exceed, 3,229,721 units of QS for the Gulf of Alaska and Bering Sea/Aleutian Islands; additionally QS holdings in the area east of 140 W. (East Yakutat and Southeast Outside) shall not exceed 688,485 units of QS for that management area.



AMENDMENT 54 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUND FISH  
FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

In Section 13.4.7.1.5, Use and Ownership Provisions, paragraphs (5) and (6) are replaced with the following:

(5) Persons, as defined below, who receive initial catcher vessel QS may utilize a hired skipper to fish their quota providing the person owns the vessel upon which the QS will be used, or the vessel is owned by a person with whom the QS holder is affiliated through membership in a corporation or partnership. These initial recipients may purchase up to the total share allowed for the area. There shall be no leasing of such catcher vessel QS other than provided for in Section 13.4.8.4(1) above.

This provision will cease upon the sale or transfer of QS or upon any change in the identity of the corporation, partnership, or estate as defined below:

(a) Corporation: Any corporation that has no change in membership, except a change caused by the death of a corporate member providing the death did not result in any new corporate member. Additionally, corporate membership is not deemed to change if a corporate member becomes legally incapacitated and a trustee is appointed to act on his behalf, nor is corporate membership deemed to have changed if the ownership shares among existing members change, nor is corporate membership deemed to have changed if a member leaves the corporation.

(b) Partnership: Any partnership that has no change in membership, except a change caused by the death of a partner providing the death did not result in any new partners. Additionally, a partnership is not deemed to have changed if a partner becomes legally incapacitated and a trustee is appointed to act on his behalf, nor is a partnership deemed to have changed if the ownership shares among existing partners change, nor is a partnership deemed to have changed if a partner leaves the partnership.

(c) Estate: Any estate that has not been disposed to a legal heir.

(d) Individual: Any individual as defined in Section 13.4.7.1.1.

(6) For sablefish each qualified person or individual may own, hold, or otherwise control, individually or collectively, but may not exceed, 3,229,721 units of QS for the Gulf of Alaska and Bering Sea/Aleutian Islands.





**DRAFT**

**REGULATORY IMPACT REVIEW/  
INITIAL REGULATORY FLEXIBILITY ANALYSIS**

**FOR**

**PROPOSED HALIBUT FISHERY REGULATIONS**

**AND**

**AMENDMENT 54 TO THE  
FISHERY MANAGEMENT PLAN FOR  
THE GROUNDFISH FISHERY OF  
THE BERING SEA AND ALEUTIAN ISLANDS**

**AND**

**PROPOSED AMENDMENT 54 TO THE  
FISHERY MANAGEMENT PLAN FOR  
GROUNDFISH OF THE GULF OF ALASKA**

prepared by

Staff  
National Marine Fisheries Service

January 2001

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## EXECUTIVE SUMMARY

Proposed halibut fishery regulations, Amendment 54 to the Fishery Management Plan of the Groundfish Fishery of the Bering Sea and Aleutian Islands, and Amendment 54 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) would address several issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. The three actions proposed are as follows.

(1) Revise IFQ Program language to allow a quota share (QS) holder's association to a vessel owner, through corporate or other collective ties, to substitute for the QS holder's vessel ownership *per se* for purposes of hiring a skipper to fish the QS holder's IFQ. The language of the FMPs and IFQ implementing regulations currently requires that a QS holder who wishes to hire a skipper to fish the QS holder's IFQ must own the vessel on which the IFQ is harvested. In cases where the QS holder is an individual who is a shareholder or partner in a corporation, partnership, association, or other entity which owns a vessel, NMFS policy has allowed the individual QS holder to hire a skipper to fish his or her IFQ on the vessel owned by the collective entity. Likewise, a corporation, partnership, association, or other entity holding QS has been allowed to hire a skipper to fish the collectively held QS on a vessel owned by an individual shareholder or partner in the collective entity holding the QS. Interpreted literally, however, the FMP language would require the person holding the QS to be the documented owner of the vessel. This document analyzes a proposal to explicitly authorize a QS holder's indirect vessel ownership, through corporate or other collective ties, to substitute for direct vessel ownership *per se* for purposes of the IFQ Program's hired skipper provisions.

(2) Revise the definition of "a change in the corporation or partnership" to include language specific to estates. Estates are implicitly included under the definition of the term "Person" in 50 CFR 679.2 as "corporations, partnerships, associations, or other entities." The IFQ Program requires that QS held by a non-individual entity such as a corporation or partnership become restricted (i.e., cease to generate annual IFQ that allows the harvest of IFQ species) upon any change in the corporation, partnership, or other entity that holds the QS. And the IFQ Program defines such "change" in a corporation, partnership, or other entity as the addition of a shareholder or partner to the corporation, partnership, or collective entity. Because estates are not collective entities that may acquire additional members, this definition does not apply to estates. Nevertheless, because an estate is not an individual QS holder, the intent of the Council with regard to non-individual QS holders requires that estates too be prohibited from holding QS indefinitely. To ensure that estate-held QS transfer eventually to a qualified individual, the FMPs and IFQ regulations need to define the point at which estates must transfer their QS to a qualified individual. This analysis reviews a proposal to specify what constitutes a "change" for estates and require, upon such a change, that estate-held QS become restricted until transferred to a qualified individual.

(3) Change sablefish use limits from percentages of the total number of QS units in the QS pool for each area to specific numbers of QS units. In June 1996, the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use limits from ½ percent to the QS equivalents of 1 ½ percent based on 1996 QS pools. This amendment also revised all halibut use limits to be expressed as fixed numbers of QS units rather than as percentages; this provides QS holders with a more stable reference for measuring their halibut QS holdings against area use limits. Sablefish IFQ use limits, however, are set in the FMPs; consequently, the regulatory change to the halibut use limits could not at the same time change the calculation of sablefish use limits to a fixed number of QS units for consistency. This FMP amendment would effect that revision to express sablefish use limits as a set number of QS units based on the appropriate percentage of the 1996 QS pools. This change would standardize the application of use limits for both halibut and sablefish fisheries and provide the same level of predictability for sablefish QS holders as currently exists for those who hold halibut QS.

## **Alternatives**

### Action 1: Revise IFQ Program language to authorize indirect vessel ownership for hired skipper provisions.

- Alternative 1: Status quo: require that the QS holder wishing to hire a skipper be the named owner of the vessel on USCG vessel documentation.
- Alternative 2: Revise Program language to allow QS holders wishing to hire skippers to establish indirect vessel ownership through ties to a corporation, partnership, association, or other entity.

### Action 2: Include language appropriate to estates in the definition of a "change" in the corporation, partnership, association or other entity.

- Alternative 1: Status quo: "a change in the corporation or partnership" will continue to be defined as the addition of a shareholder or partner. Estates will thus be able to hold unrestricted QS indefinitely.
- Alternative 2: Revise the definition of "a change in the corporation, partnership, or other collective entity" to include language specific to estates.

### Action 3: Proposal to express sablefish use limits as a specific number of QS units.

- Alternative 1. Status quo: sablefish use limits will remain expressed as a percentage of the QS pool.
- Alternative 2. Revise the methodology of calculating use limits for fixed gear sablefish from a percentage of the QS pools to a fixed number of QS units based on 1996 QS pool.

## 1. INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the Gulf of Alaska, Bering Sea, and Aleutian Islands are managed under the FMPs. Both FMPs were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94-265, 16 U.S.C. 1801 (Magnuson-Stevens Act). Halibut fisheries are managed under the authority of the Northern Pacific Halibut Act of 1982 (NPHA). The GOA FMP was approved by the Secretary of Commerce and became effective in 1978; the BSAI FMP became effective in 1982. The Individual Fishing Quota (IFQ) Program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries, was approved by NMFS in November 1993 and fully implemented beginning in March 1995. The sablefish IFQ Program is implemented by the FMPs and federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act.

The NPHA, P.L. 97-176, 16 U.S.C. 773 c (c) authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. waters which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission. The halibut IFQ program is implemented by federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the NPHA.

The Magnuson-Stevens Act authorizes the Council to recommend to NMFS changes to the IFQ Program as necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

The National Environmental Policy Act (NEPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA) require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This document is the draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) for proposed changes in the sablefish IFQ Program, through Amendment 54 to the Bering Sea/Aleutian Islands (BSAI) Groundfish FMP and Amendment 54 to the Gulf of Alaska (GOA) Groundfish FMP. Concomitant changes to the halibut IFQ program would be implemented through a regulatory amendment to 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the NPHA. Section 2 contains a Regulatory Impact Review (RIR) which addresses the requirements of E.O. 12866, and Section 3 presents the Initial Regulatory Flexibility Analysis addressing the requirements of the RFA that potential adverse economic impacts of the alternatives on small entities be considered.

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 provides the policies and procedures to be followed by NMFS when assessing environmental issues. Under NAO 216-6, certain Federal actions that individually or cumulatively do not have the potential to pose significant threats to the human environment are exempt from further analysis and the requirement to prepare an environmental impact study or an environmental analysis (EA). This exemption, known as a categorical exclusion, applies to specific actions and general categories.

Section 6.02b.3(b)(ii) of NAO 216-6 categorically excludes "actions which do not result in a significant change in the original environmental action." Included in this general category are "minor technical additions, corrections, or changes to a management plan or regulation."

The actions comprised by these proposed amendments would not result in a significant change in the original environmental action and are within the scope of issues thoroughly analyzed for implementation of the IFQ Program in the following documents:

Draft SEIS/RIR/IRFA for sablefish, November 16, 1989;  
Revised Supplement to Draft SEIS/RIR/IRFA for sablefish, May 13, 1991;  
Draft SEIS/RIR/IRFA for halibut, July 19, 1991;  
Draft SEIS/RIR/IRFA for halibut and sablefish, March 27, 1992; and  
Final SEIS/RIR/IRFA for halibut and sablefish, September 15, 1992.

*Action 1--to allow an initial allocation QS holder to hire a skipper to fish his or her IFQ on a vessel owned by a person with whom the QS holder is associated through ties to a corporation, partnership, or other collective to substitute for vessel ownership per se:* This action would revise the IFQ Program to expressly allow an interpretation of the implementing regulations that has been in effect as policy since the inception of the program in 1995. As policy already allows such practices--and has since the program was implemented in March, 1995-- the proposed action would result in no change whatsoever in business arrangements presently being practiced and allowed by policy in the IFQ Program.

*Action 2--to revise the definition of a change in the corporation or partnership to include language specific to estates:* This action would revise the IFQ Program to close a potential loophole and provide more clearly for management of QS held by certain non-individual entities in a manner already analyzed and intended for the IFQ Program.

*Action 3--to revise the use limits to be expressed in numbers of QS units rather than as percentages of the QS pool:* This action too makes no significant change in management of the IFQ fisheries; use limits have been an integral part of the IFQ Program since its development and inception. Expressed as a percentage of the QS pool, the use limit can vary from year to year. By expressing the use limits in numbers of QS based on the 1998 QS pool, this action would provide QS holders with a more stable use limit by which to manage their QS holdings more efficiently. The change to numbers of QS units would not significantly affect the size of the QS use limits.

For these reasons, these proposed amendments are determined to comprise such minor corrections and changes as envisioned by NAO 216-6 and are thus categorically excluded from the need for an environmental assessment.

## **1.1 Action 1: Corporate association and vessel ownership in the IFQ hired skipper provisions**

### **1.1.1 Purpose of and need for the action**

An exception to the owner-onboard provision allows initial recipients and all non-individual holders of B, C, or D category QS (so-called "catcher vessel" QS that allows a fisherman to harvest but not process any IFQ species aboard his vessel) to employ hired skippers to fish their IFQ provided that the QS holder owns the vessel on which the IFQ species are being fished. This exception was created to allow fishermen who had operated their fishing businesses in this manner prior to the IFQ Program to have some flexibility to continue operating this way. While the IFQ Program prohibits leasing of IFQ derived from B, C, or D category IFQ, this exception allows initial recipients of QS to remain ashore while having their IFQ harvested by a hired skipper. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

Likewise, a non-individual QS holder such as a corporation or partnership must designate a hired skipper, the individual who will actually fish the QS holder's IFQ. As the regulations require that QS held by a

collective entity transfer to a qualified individual upon a change in the collective entity, the hired skipper provision for collective entities will also disappear over time.

The language of the IFQ Program and its implementing regulations requires that the QS holder wishing to hire a skipper must be the owner of the vessel on which the hired skipper fishes the QS holder's IFQ:

Persons, as defined below, who receive initial catcher vessel QS may utilize a hired skipper to fish their quota providing the person owns the vessel upon which the QS will be used. (14.4.7.1.5(5) BSAI FMP; 4.4.1.1.5(5) GOA FMP)

50 CFR 679.42(i)(1) An individual who receives an initial allocation of QS assigned to vessel categories B, C, or D does not have to be on board and sign IFQ landing reports if that individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.

50 CFR 679.42(j) Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations or partnerships. A corporation or partnership that receives an initial allocation of QS assigned to vessel categories B, C, or D may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS.

The regulations define the term "person" to mean an individual, corporation, partnership, association, or other entity. Literally interpreted, the regulations require the person holding the QS, whether an individual or a collective entity, to be the named owner of the vessel in order to participate in the hired skipper exception to the IFQ Program's owner-onboard requirements. A corporation or partnership would not be allowed to hire a skipper to fish its collectively held QS on a vessel owned by an individual, even if that individual is a member of the corporation or partnership. Nor would an individual be allowed to hire a skipper to fish his or her individually held QS on a vessel owned by a corporation or partnership, even if that individual is a shareholder or partner in the collective which owns the vessel.

During the 1995-2000 IFQ seasons, NMFS has broadly interpreted the IFQ Program language to allow persons holding initial allocation QS to hire skippers to fish their IFQ on vessels owned by other "persons," provided that the QS holder could show a corporate association to the owner of the vessel (such as an individual QS holder's membership in the corporation or partnership that owns the vessel, or the collective QS holder's having the owner of the vessel as a shareholder or partner in the corporation or partnership holding the QS). This policy allows individual QS holders to hire skippers to fish their IFQ on vessels owned by corporations or partnerships in which the individual QS holders are shareholders or partners; likewise, the policy allows corporations or partnerships holding QS to fish the collectively held QS on a vessel owned by individuals who are shareholders or partners in the corporation or partnership.

At the beginning of the 1997 IFQ season, NMFS announced to the IFQ fleet that this policy of broadly interpreting the term "person" as it pertains to IFQ hired skipper provisions would continue in effect for the 1997 season, or until the Council makes a determination on whether the policy comports with Council intention. Consequently, in September 1997, the Council requested analysis of alternatives for this issue.

### **1.1.2 Alternatives considered**

Alternative 1: Require that NMFS policy be amended to comport with a literal interpretation of the existing FMP language, so that the person, whether an individual or a collective, hiring a skipper to fish initial allocations of B, C, or D category QS be named as the owner of the vessel on the appropriate documents submitted to NMFS/RAM as proof of vessel ownership for purposes of obtaining a hired skipper card.

Alternative 2: Revise the FMP language and pertinent regulations to allow, for purposes of the hired skipper provisions only, that a QS holder wishing to hire a skipper possess ownership interest in a vessel either directly, as a documented owner of the vessel, or indirectly, through corporate or other such collective ties to a documented owner of the vessel.

This alternative would revise the FMPs and regulations to support NMFS's past policy of allowing QS holders to substitute for vessel ownership a corporate link to a vessel owner, solely for purposes of the hired skipper provision.

## **1.2 Action 2: Revise the definition of "a change in the corporation or partnership."**

### **1.2.1 Purpose of and need for the action.**

To prevent excessive consolidation of QS and promote an owner-operator IFQ fleet, the IFQ regulations restrict the extent to which corporations, partnerships, and other collective entities can hold B, C, or D category QS. One manner for regulating corporate QS holdings is to require that corporations or partnerships transfer the collectively held QS to a qualified individual upon the addition of a shareholder or partner to the collective entity. The pertinent regulations at 50 CFR 679.42(j)(1)-(2) read as follows:

(1) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to vessel categories B, C, or D loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph (j), "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

By specifying the exact nature of "a change in the corporation or partnership," the regulatory language excludes other possible changes in non-individual entities holding QS which, to effect the general intent of the IFQ Program in regards to QS held by other than individuals, should also require the transfer of the QS to a qualified individual. Specifically, NMFS would revise the definition of "a change in the corporation or partnership" to include language specific to estates. An estate is not a collective entity such as a corporation or partnership and would not acquire additional "partners" or "shareholders." Nevertheless, an estate may change in such a way as to require the transfer of estate-held QS to a qualified individual. QS held by an estate does not automatically transfer upon the determination by probate of a legal heir and the subsequent disposition and dissolution of the estate. Such estates holding QS but dissolved by disposition to an heir would continue to receive annual allocations of IFQ derived from the estate-held QS, unless NMFS/RAM Division is notified of the dissolution and such dissolution is defined in the IFQ implementing regulations as the point at which the estate-held QS must transfer to a qualified individual. At the point of the determination of an heir and the legal disposition and dissolution of an estate, the estate would lose its eligibility to hold QS in the same way that a corporation or partnership loses eligibility to hold QS by the addition of a shareholder or partner.



### **1.2.2 Alternatives considered**

Alternative 1: Status quo. No revision would be made to the definition of "a change in the corporation or partnership" currently in the FMPs and IFQ implementing regulations.

An estate dissolved by the legal determination of an heir may technically continue to receive annual allocations of IFQ derived from QS held by the estate, because the criterion that requires an entity to transfer its QS to a qualified individual is narrowly defined as "the addition of a shareholder or partner."

Alternative 2: Revise the definition of "a change in the corporation or partnership" to include the dissolution of an estate by the legal determination of an heir to the estate. Estates so dissolved would be required to transfer any estate-held QS to a qualified individual.

By adding "dissolution of the estate by the determination of a legal heir by probate" to the definition of a change which requires the consequent transfer of estate-held QS to qualified individuals, NMFS will be able to ensure more effectively that such entities not hold QS in violation of the intent of the IFQ Program to promote an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

## **1.3 Action 3: Sablefish use limits**

### **1.3.1 Purpose of and need for the action**

One important feature of the IFQ Program is a limitation of the amount of quota shares (QS) an individual may control, also known as a "use cap." The use cap was created to address concerns that an unrestricted market for QS could result in a few powerful interests controlling most of the landings and result in excessive decreases in the number of vessels and fishermen participating in the fixed gear halibut fishery. While QS holders are allowed to harvest the QS received from an initial issuance, the one-percent cap limits consolidation among QS holders who were not initial issues to no fewer than 100 participants in either: (1) Areas 2C through 4E; or (2) Area 2C alone. A more detailed description of the management goals of the use cap, the Council action that recommended revising the halibut cap in the Bering Sea, and the conversion from percent to halibut QS units can be found in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Increase Halibut QS Use Caps in the Bering Sea/Aleutian Islands (NPFMC 1996).

Current regulations restrict sablefish use, such that:

- (1) No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS.
- (2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

In June 1996, the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use caps from ½ percent to the QS equivalents of 1 ½ percent based on 1996 QS pool. This amendment was approved beginning with the 1997 IFQ season. Current regulations specify that unless the amount in excess

of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

- (1) IFQ regulatory area 2C. 599,799 units of halibut QS.
- (2) IFQ Regulatory areas 2C, 3A, and 3B. 1,502,823 units of halibut QS.
- (3) IFQ Regulatory areas 4A, 4B, 4C, 4D, and 4E. 495,044 units of halibut QS.

This plan amendment proposes to revise the sablefish use caps such that the caps will be calculated in QS units based on the 1996 QS pool. This change will standardize the application of use caps for both halibut and sablefish fisheries.

### **1.3.2 Alternatives considered**

#### **Alternative 1. Status quo.**

Alternative 1 would result in no action to standardize the calculation of use limits for the fixed gear halibut and sablefish fisheries. Under this alternative, sablefish use limits will continue to be calculated as a percentage of the combined total sablefish QS pools for: (1) the GOA and BSAI IFQ regulatory areas; and (2) east of 140° W. longitude (Southeast Alaska).

#### **Alternative 2. Revise the methodology of calculating use limits for fixed gear sablefish from percent to QS units based on 1996 QS units.**

Alternative 2 would standardize the methodology of calculating use limits in QS units recommended by the Council in 1996 and implemented by NMFS for halibut QS in the 1997 IFQ season. Note that this alternative would not adjust the amount of QS that an individual could use. It simply proposes to set those limits in QS units, based like the halibut use limits on the 1996 QS pool, instead of as a percentage of the QS pool. Using the proposed method, sablefish use limits would be:

- (1) Sablefish IFQ regulatory area SE. 688,485 units of sablefish QS.
- (2) All other sablefish IFQ Regulatory areas. 3,229,721 units of sablefish QS.

## **2.0 REGULATORY IMPACT REVIEW**

The Regulatory Impact Review (RIR) provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs.

An RIR is required by NMFS for all regulatory actions or for significant Department of Commerce or NOAA policy changes that are of significant public interest. The RIR: (1) provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major

alternatives that could be used to solve the problems; and (3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

Executive Order 12866, "Regulatory Planning and Review," was signed on September 30, 1993 and established guidelines for promulgating new regulations and reviewing existing regulations. While the order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order describes the regulatory philosophy and principles that are to guide agency development of regulations. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity) that maximize net benefit to the nation.

The regulatory principles in E.O. 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives, such as user fees or marketable permits, to encourage the desired behavior. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. Each agency shall assess both the costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.

An RIR is required for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles of E.O. 12866.

Executive Order 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

## **2.1 The problem, the management objectives, and the alternatives**

Descriptions of the management objectives and the problem being addressed can be found in Section 1 and are included here by reference.

This proposed action would make three changes to the IFQ Program for fixed gear Pacific halibut and sablefish fisheries off Alaska. The first change would modify the program's hired skipper provisions to allow a person who holds an initial allocation of catcher vessel QS to hire a skipper to fish the person's IFQ on a vessel owned by another person to whom the QS holder is associated through corporate or other collective ties. Presently, a QS holder must possess a minimum of 20% interest in the vessel in his or her own name (i.e., the QS holder must be a named owner of the vessel on Coast Guard vessel documentation). This proposed action would allow an individual QS holder who is a shareholder in a corporation or partnership to hire a skipper on a vessel owned by the corporation or partnership. Likewise, a corporation or partnership holding QS would be allowed to hire a skipper to fish the collectively held QS on a vessel owned by an individual who is a shareholder or partner in the corporation or partnership.

The second change proposed in these amendments would revise the definition of a "change" in a corporation or partnership to include language specific to estates. Presently, QS holdings by collective entities are regulated by requiring a collective to transfer its QS to a qualified individual upon any "change" in the collective. A "change" is defined by the addition of a shareholder or partner. Estates, because they are not collective entities with the potential to acquire new members, never "change" under this definition and thus would be able to hold QS indefinitely. This action would define a "change" for estates as the determination of a legal heir to the estate and thus provide the regulatory means to determine the point at which estates also be required to transfer any QS holdings to a qualified individual.

The third change would revise the sablefish use limits to be expressed as specific numbers of QS units rather than as percentages of the QS pool.

These actions are described in more detail earlier in this document. Action 1, "Corporate association and vessel ownership in the IFQ hired skipper provisions" is described in Section 1.1, Action 2, "Revise the definition of 'a change in the corporation or partnership'" is described in Section 1.2, and Action 3, "Sablefish use limits" is described in Section 1.3. These detailed descriptions are included here by reference.

## **2.2 Action 1: Indirect Vessel Ownership**

### **2.2.1 Management Action Alternatives**

Alternative 1: Status quo: require that the QS holder wishing to hire a skipper be the named owner of the vessel on USCG vessel documentation.

Alternative 2: Revise the IFQ Program to allow QS holders wishing to hire skippers to establish indirect vessel ownership through ties to a corporation, partnership, or other such collective entity.

### **2.2.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action**

This action would potentially affect all corporations or partnerships or other collective entities holding B, C, or D category QS and all individuals holding such QS who are also members of corporations or partnerships. In the 2000 IFQ season, 492 distinct QS holders (both individuals and non-individual entities) hired skippers to fish their IFQ. Restricted Access Management's (RAM) records indicate that 173 of those QS holders held no ownership interest in the vessels on which hired skippers fished the QS holders' IFQ. RAM does not maintain data that directly indicates indirect ownership; for purposes of this analysis, however, we can assume that those 173 QS holders represent instances of indirect ownership. RAM cannot determine how many of those 173 were corporations who used hired skippers on vessels owned by individual shareholders in the corporation, or how many were individuals who used hired skippers on vessels owned by corporations in which they were shareholders, or how many represent some other corporate or collective ties recognized by RAM as constituting "indirect" ownership.

### **2.2.3 Costs and Benefits**

This proposal would benefit QS holders with hired skippers by making the legal basis for their contractual arrangements more secure. No change in Council or NMFS policies are involved. The benefit from this change cannot be monetized without intrusive survey research. There are no additional administrative, enforcement, or information costs incurred under either alternative. Because the costs are zero and the benefits are believed to be positive, this proposal probably has a positive net benefit, although clearly does not approach the "significant" threshold set forth in the executive order..

## **2.3. Action 2: Revise definition of "a change in the corporation, partnership, or other collective entity."**

### **2.3.1 Management Action Alternatives**

- Alternative 1: Status quo. A "change" in a corporation, partnership, or other collective entity holding QS will continue to be defined solely by the addition of a shareholder or partner to the entity.
- Alternative 2: Revise the definition of "a change in the corporation or partnership" to include the dissolution of an estate by the legal determination of an heir to the estate. Estates so dissolved would be required to transfer any estate-held QS to a qualified individual.

### **2.3.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action**

Sixteen estates currently hold QS. The number of estates that were initially awarded QS on the basis of the fishing history of a deceased fisherman but have since been effectively dissolved through the legal determination of an heir is unknown.

### **2.3.3 Costs and Benefits**

This step is not likely to increase the efficiency with which the fishery is conducted. By reducing somewhat the flexibility some QS holders may have with respect to business organization, it may hurt efficiency to a very limited extent. However, any such gains in efficiency (to the extent that they actually exist) would come in direct counter valence to the expressed purpose and intent of the original action, and thus should not be credited, and would not contribute, to the aggregate benefit to the nation from the IFQ Program.

Adoption of the proposed alternative would make it possible to address the Council's interest in the distributional impacts of the program - particularly those which keep QS in the hands of IFQ crew members as defined in §679.2. IFQ crew members are individuals who have worked for 150 days in the harvesting crew in U.S. commercial fisheries, or initial QS recipients. These distributive considerations underlie the social contract on which the IFQ program is based and thus underlie, in a fundamental way, the efficiency gains from the program. This proposal does not change the Council's distributive policy; it corrects an oversight that might have led to a loophole in some instances.

There are no additional administrative, enforcement, or information costs would be expected under the proposed alternative to the status quo.

## **2.4 Action 3: Revise sablefish use limits**

### **2.4.1 Management Action Alternatives**

Alternative 1. Status quo.

Alternative 2. Revise the methodology of calculating use limits for fixed gear sablefish from percent to QS units based on 1996 QS units.

Alternative 2 would revise the sablefish use limits for consistency with the halibut use limits which were revised by regulatory amendment in 1996 to read in a specific, fixed number of QS units rather than as a percentage of the QS pools.

### **2.4.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action**

This proposed action would affect all QS holders holding sablefish QS. At the end of the 2000 IFQ season, 929 persons held sablefish QS. Alternative 2 would benefit all 929 sablefish QS holders by establishing the use limit as a stable number of QS units that will enable a QS holder to determine more accurately his or her QS holdings' proximity to known and predictable limits.

### **2.4.3 Costs and Benefits**

If user caps are defined in terms of percentages of the QS that may be held, the fishing capacity they provide each year, measured in terms of IFQs, will fluctuate each year as fishery TACs change. The uncertainty that this will cause may impose a burden on fishermen close to or at the user cap limit. They may be forced to incur costs to adjust their holdings each year to stay within the user cap limit. Redefinition of the user cap in terms of numbers of IFQ will eliminate year-to-year fluctuations in the user cap. The Council remains free to adjust the user cap periodically in order to meet its social objectives.

The proposed QS caps should not require any fisherman to dispose of QS to meet this new requirement. The 2001 QS caps have not yet been published, but both of the 2000 QS caps were below the levels proposed here.

This proposal appears to have net benefits for operators close to the user cap limits. These benefits cannot be estimated at this time. There are no additional administrative, enforcement, or information costs would be incurred under either alternative or option. Although the benefits cannot be estimated, they are probably

positive. Since there are no costs to this proposal, the net benefit of the proposal is probably positive, and certainly does not approach the "significant" threshold set forth in the executive order.

## **2.5 Review of significance criteria**

The total gross ex-vessel value of the halibut taken in the commercial fishery off of Alaska in 1999 was \$116.9 million; the total gross value for the sablefish longline fishery was \$70.8 million. The proposals under consideration will make marginal administrative changes in these fisheries. Although it has not been possible to monetize the benefits and costs from these proposed program changes, their total net impact on the economy will be far below \$100 million, annually. These proposals generally have no attributable cost and are expected to produce benefits for industry. For these reasons, they are unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These programs are not likely to meet the economic criterion for significance under Executive Order 12866.

NMFS does not believe that the proposed rule will create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

## **3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agencies' awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

### **3.1 Requirement to Prepare an IRFA**

The central focus of the IRFA should be on the economic impacts of a regulation on small entities and on the alternatives that might minimize the impacts and still accomplish the statutory objectives. The level of

detail and sophistication of the analysis should reflect the significance of the impact on small entities. Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to address:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.

### **3.2 What is a Small Entity?**

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act. 'Small business' or 'small business concern' includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. . . . A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."



The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$ 3 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership under the following conditions: (1) If a person owns or controls, or has the power to control, 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, that person is considered an affiliate of the firm; (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines a "small organization" as any nonprofit enterprise that is independently owned and operated and not dominant in its field.

Small governmental jurisdictions. The RFA defines a "small governmental jurisdictions" as a city, county, town, township, village, school district, or special district with a population of fewer than 50,000.

### **3.3 Purpose and Legal Basis for the Proposed Rule**

The legal basis for these proposed actions is described at the start of Section 1 of this RIR/IRFA. The purpose and the need for the actions are described in Sections 1.1.1. (Corporate association and vessel ownership in the IFQ hired skipper provisions), 1.2.1 (Revise the definition of a change in the corporation or partnership), and 1.3.1 (Sablefish use limits). These descriptions of the legal basis and of the purpose and need for the actions are included here by reference.

### **3.4 Small Entities in the IFQ Program**

The halibut and sablefish fisheries are described in more detail in the Final SEIS/RIR/IRFA for halibut and sablefish (September 15, 1992). At the end of 2000, 3,649 unique persons (individuals, corporations, and partnerships) held halibut QS, while 897 unique persons held sablefish QS.

These proposed actions would potentially affect all holders of initially allocated QS in categories B, C, or D (three different catcher vessel length categories) in the IFQ Program. At present, NMFS does not have sufficient net revenue data or ownership/affiliation information to determine precisely the number of small entities in the IFQ Program or the number that would be impacted by the present action. For the reasons discussed in the next paragraph, for the purpose of this analysis, NMFS has assumed that all operations are small.

In 1999 1,613 unique vessels made IFQ halibut landings, and 433 unique vessels made sablefish landings. (NMFS 2000(b) Tables III-n and III-o, page 22). The number of small entities operating as fishing vessels in the IFQ Program may be deduced from certain restrictions the program places on those vessels. The IFQ program limits the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to a half percent (0.5%) of all halibut IFQs or up to one percent (1.0%) of all sablefish IFQs. In 2000 these limits were 265,370 pounds of halibut (headed and gutted weight) and 299,261 pounds of sablefish (round weight). No vessel subject to these restrictions could have been used to land more than \$3,000,000 worth of halibut and sablefish combined in 1999. NMFS annually publishes "standard prices" for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating permit holder cost recovery fee liabilities. In 2000, this price data suggests that the price of halibut might have been about \$2.50 per pound of halibut (headed and gutted weight) and \$2.50 per pound of sablefish (round weight). (NMFS, 2000(b) Tables ). These harvest limits and prices imply maximum vessel revenues of about \$1,400,000 for halibut and sablefish taken together. Therefore all halibut and sablefish vessels may be treated as small entities. These estimates are likely to overestimate the numbers of small entities since they do not take account of income that might have been earned by the vessel in other fisheries or activities, and they do not take account of vessel affiliations.

### **3.5 Action 1: Indirect Vessel Ownership--Economic Impact on Small Entities**

The maximum number of affected fishermen could be the approximately 3900 persons, both individual and collective entities, who, as of January 2001, hold category B, C, or D QS and, by virtue of having received initial allocations, are eligible to hire skippers. The impact of Alternative B would be to create explicit regulatory authority for current NMFS policy that gives QS holders, whether collective entities or individuals who are partners or shareholders in collective entities, an additional option in using the hired skipper provisions of the IFQ Program. At present, NMFS has no data indicating how many of individual QS holders may be shareholders or partners in collective entities or how many collective entities may have individual

members who own fishing vessels. Providing QS holders with an additional option for taking advantage of the hired skipper provision will likely benefit QS holders who hold initial allocations of catcher vessel QS.

NMFS/Restricted Access Management Division (RAM) estimates that, in the 2000 IFQ season, instances of "indirect ownership," where corporate association to a vessel owner has been allowed to substitute for the QS holder's vessel ownership, amount to approximately 35% of the approved applications for hired skipper cards: 173 of the 492 QS holders who hired skippers to fish their IFQ did not own the vessels on which the hired skippers harvested the IFQ. "Corporate association" comprises a variety of relationships between QS holder and vessel owner: an individual QS holder may hire a skipper to fish his IFQ on a vessel owned by a corporation in which he is a shareholder; an individual QS holder who is also a shareholder in a corporation may hire a skipper to fish his IFQ on a vessel owned by another individual in that same corporation; a corporate QS holder may hire a skipper to fish the corporation-held QS on a vessel owned by a shareholder in the corporation or by another corporation in which the corporation holding the QS holds an interest.

In the past, the relationship between the QS holders and the vessel owners has varied considerably among persons hiring skippers on vessels owned by other persons. From 1995 to 1998 (the only years for which NMFS has discrete data on such relationships), Restricted Access Management records that of 68 persons who hired skippers on vessels not owned by the QS holder during those three IFQ seasons:

- 15 QS holders were individuals whose vessels were owned by non-individual.
- 10 were non-individuals whose vessels were owned by individuals.
- 11 were non-individuals whose vessels were owned by other non-individuals.
- 6 were individuals whose vessels were owned by multiple "persons."
- 18 were non-individuals whose vessels were owned by multiple "persons."
- 3 were estates whose vessels were owned by the estate representative.
- 1 was an estate whose vessel was owned by a corporation.
- 1 received QS as a surviving spouse; vessel owned by deceased spouse.
- 3 had unknown ownership links to vessels.

RAM data systems no longer collect or maintain the information necessary to distinguish such particular business arrangements among instances of indirect ownership. However, the number of instances of indirect ownership overall has grown from 68 in 1998 to 173 in the latest IFQ season.

Some critics of the IFQ Program's hired skipper provisions have argued that the practice of hiring skippers is tantamount to leasing of IFQ, which the program strictly prohibits in order to promote an owner-operator fishery and prevent the acquisition of QS by investment speculators. Recognizing that some hired skipper practices may amount to *de facto* leasing, the Council in 1998 recommended, and NMFS implemented, a regulatory amendment that more restrictively defines the vessel ownership criteria under which a QS holder may hire a skipper. Critics contend that the Council, having further restricted the circumstances under which QS holders may hire skippers, now proposes, in contrast, to mitigate an existing restriction that requires the QS holder to be the named owner of the vessel harvesting the QS holder's IFQ. At present, however, the issue is academic, since that restriction exists only in a literal interpretation of "ownership," and NMFS policy has consistently interpreted that language more liberally to allow for so-called "indirect" ownership. Nevertheless, the policy conceivably keeps some QS off the open market, where it might be acquired by small entities seeking to increase their QS holdings, and allows some QS holders to remain in the fishery who are neither owners nor operators of the vessels harvesting their QS. Although the extent of impact cannot be determined at present, the proposed amendments would give regulatory authority to a policy that is already in effect and likely does not have a significant impact on small entities who are qualified individuals wishing to purchase QS.

It is important to note, however, that the hired skipper privilege is limited to initial recipients of QS, as a grandfather provision for those who operated their fishing businesses in this way prior to implementation of the IFQ Program. As those initial recipients retire from fishing and transfer their QS to qualified individuals, the practice of hiring skippers will gradually disappear.

### **3.6 Action 2: Redefine a Change in the Corporation, Partnership, or Collective Entity--Economic Impact on Small Entities**

Only estates would be affected by this proposal. There were 16 estates currently holding unrestricted B, C, or D category QS as of January 2001.

The purpose of the proposed Alternative B is to make IFQ Program regulations governing estate-held QS responsive to situations in which such entities cease to exist as such and thus may no longer appropriately hold QS that generates annual IFQ. This action would require estates holding QS to transfer the QS to a qualified individual once a legal heir to the estate is determined. Once a legal heir is determined, an estate holding QS would have two options: it would be able to continue to hold its QS, but to no profit, since the QS would then be restricted from generating the annual IFQ that directly licenses the harvest of IFQ species; or the estate would be able to sell its restricted QS to an individual qualified to hold annual IFQ and fish for IFQ halibut and sablefish.

Either alternative would certainly have an economic impact on estates. However, because the Program was never intended to allow non-individual entities to hold QS indefinitely, this proposed action would have no impact not originally intended and analyzed for the IFQ Program. Presently, the data are not available by which to determine the full character and extent of the impact on the 16 estates currently holding unrestricted catcher vessel QS.

### **3.7 Action 3: Revise Sablefish Use Limits--Economic Impact on Small Entities**

The proposed Alternative B could potentially affect the 929 persons who, as of the end of the 2000 IFQ season, held Sablefish QS. However, the actual affect would be limited to a much smaller group of persons, those who were at or near the QS cap. As noted earlier, all QS holders are assumed to be small entities.

As noted in the RIR, the impact of this proposal would be to reduce the administrative costs for those entities at or near the QS cap. Thus, it might have some beneficial impacts on the larger of the small entities. It would give QS holders a more accurate measure of when their sablefish QS holdings are approaching the use limits and thus to allow them to manage their QS holdings more efficiently and to prevent constant ratcheting-up of grandfathered amounts of QS when the pools increase, although the pools change only slightly at this time. There would be no negative impacts on any small entities. Thus, this proposal would not have a negative effect on the profitability or cash flow of small entities, nor would it be likely to impose a disproportionate negative impact on small entities.

### **3.8 Other Considerations Required by the Regulatory Flexibility Act**

No additional recordkeeping and reporting requirements are associated with this action.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this proposed action.

NMFS is not aware of any alternatives in addition to the alternatives considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

#### **4.0 SUMMARY**

This proposed action would address three issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska:

(1) Revise IFQ Program language to allow a QS holder's corporate association to a vessel owner to substitute for a QS holder's vessel ownership for purposes of hiring a skipper to fish the QS holder's IFQ;

(2) Revise the definition of "a change in the corporation or partnership" to include language specific to the dissolution of estates holding QS.

and (3) Change sablefish use limits from percentage of the total number of QS units to a specific number of QS units.

The impacts projected for the proposed actions would appear to be positive, but without the data necessary to make that determination conclusively, NMFS cannot certify that these actions will not have a significant adverse effect on a substantial number of small entities within the meaning of the RFA.

## **5.0 LIST OF AGENCIES AND INDIVIDUALS CONSULTED**

Tracy Buck  
NMFS RAM Division  
P.O. Box 21668  
Juneau, Alaska 99802-1668

Jane DiCosimo  
North Pacific Fishery Management Council  
605 W. 4th Avenue  
Anchorage, Alaska 99501

## **6.0 LIST OF PREPARERS**

James Hale  
Sustainable Fisheries Division  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802

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